



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HARRY AND TESSIE SOMERS }

For Appellants: Ira Jacoves
Attorney at Law

For Respondent: Crawford H. Thomas
Chief Counsel

Gary Paul Kane
Tax Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Harry and Tessie Somers against a proposed assessment of additional personal income tax in the amount of \$741.11, and penalty in the amount of \$37.06, for the year 1961.

The sole issue presented by this appeal is the propriety of respondent Franchise Tax Board's disallowance of certain deductions in conformity with action taken by the Internal Revenue Service.

Appellants are husband and wife. They filed a joint state personal income tax return for 1961. After they filed their federal and state returns for 1961, the Internal Revenue Service conducted an audit and made adjustments to appellants' federal return, disallowing certain business deductions in the total amount of \$34,994.94. Subsequently, appellants and the Commissioner of Internal Revenue entered into an agreement wherein appellants agreed to accept an additional assessment based upon disallowed expenses in the reduced amount of \$10,587.27.

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In addition; the assessment agreed to by appellants included a five percent penalty for negligence pursuant to section 6653(a) of the Internal Revenue Code of 1954.

Respondent, in conformity with the Internal Revenue Service's action, made identical adjustments to appellants' 1961 state income tax return. Respondent also imposed a five percent penalty for negligence pursuant to section 18684 of the Revenue and Taxation Code. Respondent's denial of appellant protest gave rise to this appeal.

Appellants contend that the proposed assessment is unwarranted and unreasonable. They admit signing the agreement with the Internal Revenue Service but feel the deficiency assessment was highly excessive.

A determination by respondent based upon federal action is presumed to be correct, and the burden is upon the taxpayer to establish that it is erroneous. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P. 2d 414]; Appeal of J. Morris and Leila G. Forbes, Cal. St. Bd. of Equal., Aug. 7, 1967; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.) No evidence has been offered in support of appellants' statements that the proposed assessment is unreasonable. In the absence of any evidence which would corroborate appellants' self-serving statements, appellants have failed to meet the burden of proof and respondent's action must be sustained.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Harry and Tessie Somers against a proposed assessment of additional personal income tax in the amount of \$741.11, and penalty in the amount of \$37.06, for the year 1961, be and the same is hereby sustained.

Done at Sacramento, California, this 25th day of
March, 1968, by the State Board of Equalization,

Paul A. Lee, Chairman
Wm. R. Lee, Member
John W. Lynch, Member
", Member
", Member

ATTEST:

W. H. H. H. H., Secretary